



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1996

Mr. Robb D. Catalano
Assistant City Attorney
Office of the City Attorney
Criminal and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR96-1921

Dear Mr. Catalano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102382.

The Dallas Police Department (the "department") received a request for "all documents that are available under the Open Records Act regarding [the requestor's] client," including a copy of the probable cause affidavit. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

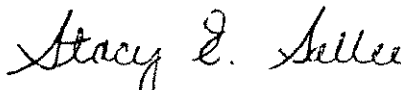
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is

¹We note that no probable cause affidavit was submitted to this office for review. If no affidavit exists, the department is not required to provide it. Open Records Decision No. 534 (1989) (governmental body is not required to take affirmative steps to create or obtain information that is not in its possession). If such an affidavit exists and it was filed with the court, it has become a public record and may not now be withheld. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). If the probable cause affidavit was made to support a search warrant, the affidavit is public by statute if it has been executed. See Code Crim. Proc. art. 18.01(b). Therefore, the city may not withhold an executed search warrant from required public disclosure under section 552.108 of the Government Code. If the affidavit was not filed with the court, we will address it together with the other submitted information under section 552.108.

generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 102382

Enclosures: Submitted documents

cc: Mr. Warren Hays
Attorney at Law
P.O. Box 451237
Garland, Texas 75045
(w/o enclosures)

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.